



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

JUL 30 2015

UPS PRIORITY OVERNIGHT/EXPRESS MAIL  
SIGNATURE REQUIRED

Christopher W. Howe  
Director, Health, Safety, Environment & Government Affairs  
Valero Benicia Refinery  
3400 East Second Street  
Benicia, California 94510-1005  
[Chris.howe@valero.com](mailto:Chris.howe@valero.com)

**RE: Notice of Intent to File a Complaint Pursuant to Section 3008(a) of the Resource Conservation and Recovery Act and Section 325(c) of the Emergency Planning and Community Right-to Know Act**

Dear Mr. Howe:

This letter is to notify you that the U.S. Environmental Protection Agency ("the EPA" or "the Agency") is preparing to issue a civil administrative complaint against Valero Benicia Refinery pursuant to Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6921-6939e; and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 – 11050, for violations discovered during routine compliance evaluation inspections performed in May 2014 at 3400 East Second Street, Benicia, California.

The allegations against Valero Benicia include violations of the RCRA Hazardous Waste Management requirements, 42 U.S.C. § 6921 *et seq.*, the California Health and Safety Code, Division 20, and the California Code of Regulations (CCR), Title 22, Division 4.5, as specified below; and EPCRA Section 313, 42 U.S.C. § 11023. Under Section 3006 of RCRA, 42 U.S.C. § 6926, the violations of the State of California authorized RCRA hazardous waste management program identified below are federally enforceable.

The allegations against Valero Benicia Refining Company include:

1. Treatment and Storage of Hazardous Waste Without a Permit (operating an unlined stormwater surface impoundment as a hazardous waste management unit without obtaining a RCRA permit; storing and treating hazardous waste on the heat exchanger bundle cleaning pad without a RCRA permit), 22 CCR § 66270.1(c) [see also 40 CFR § 270.1(c)];
2. Failure to make a hazardous waste determination, 22 CCR § 66262.11 [see also 40 CFR § 262.11];

3. Failure to minimize the possibility of unplanned release of hazardous waste or hazardous waste constituents to air, soil or surface water, 22 CCR§ 66265.31 as referenced by § 66262.34(a)(4) [see also 40 CFR § 265.31, as referenced by § 262.34(a)(4)]; and
4. Failure to submit timely, complete and correct Toxic Chemical Release Inventory Forms ("Form R reports") pursuant to EPCRA Section 313 for: BUS 0 0 JUL
  - Benzene in reporting years ("RY") 2010, 2011 and 2012;
  - Ethylbenzene in RY2012;
  - Ethylene in RY2010 and RY2011;
  - Toluene in RY2010, RY2011 and RY2012; and
  - Xylene (mixed isomers) in RY2010, RY2011 and RY2012.

A copy of the RCRA/EPCRA inspection report is enclosed for your information and response. The report identifies potential violations of RCRA and EPCRA observed during EPA's investigation. EPA regulations governing the confidentiality of business information are set forth in 40 CFR Part 2, Subpart B. EPA routinely provides copies of investigation reports to state agencies, and upon request, to the public. Such releases are handled according to the Freedom of Information Act regulations (40 CFR Part 2). If Valero Benicia Refinery believes the enclosed RCRA/EPCRA report contains information entitled to treatment as confidential business information, please assert a confidentiality claim in accordance with 40 C.F.R. § 2.203(b) **within fourteen (14) calendar days from the date of receipt of this letter**. Business confidentiality includes the concept of trade secrecy and other related concepts. Your claim must specifically identify the information covered by the claim and should be sent to EPA by certified mail. EPA will construe the failure to furnish a confidentiality claim within **fourteen (14) calendar days** from the date of Valero Benicia Refinery's receipt of this letter as a waiver of that claim and information may be made available to the public by the EPA without further notice. See 40 CFR § 2.203(a)(2).

EPA anticipates filing a Complaint, Compliance Order and Notice of Right to Request a Hearing (Complaint) against Valero Benicia Refinery **within the next twenty-eight (28) calendar days** unless Valero Benicia Refinery advises EPA of substantial reasons not to proceed. EPA is extending to Valero Benicia Refinery the opportunity to submit any information that EPA should consider before issuing the Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed after the inspection, or financial factors bearing on Valero Benicia Refinery's ability to pay a civil penalty.

Even if you are unaware of any mitigating or exculpatory factors, we are extending to you the opportunity to commence settlement discussions concerning the above-described violations.

The violations alleged are subject to penalties of up to \$37,500 per day per violation pursuant to section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) and the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 75340 (Dec. 11, 2008)).

Any penalty discussed in settlement negotiations for violations of RCRA and its implementing regulations will be calculated pursuant to EPA's RCRA Civil Penalty Policy, available online at <http://www2.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>. Penalties for EPCRA violations will be calculated pursuant to EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended], available online at <http://www2.epa.gov/sites/production/files/documents/epcra-sec311-mem.pdf>.

EPA's Civil Monetary Penalty Inflation Adjustment Rule and Supplemental Environmental Projects Policy (SEP Policy) are available at the links below. EPA's SEP Policy describes the terms under which a commitment to perform an environmental project may mitigate, in part, an EPA civil penalty.

- EPA's "Civil Monetary Penalty Inflation Adjustment Rule," which adjusts for inflation the statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations, available online at: <http://www2.epa.gov/enforcement/memorandum-amendments-epas-civil-penalty-policies-implement-2008-civil-monetary-penalty>
- EPA's Supplemental Environmental Project (SEP) policy, available online at: <http://www2.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf>

In addition, please review the attached Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Information Sheet that is designed to provide information on compliance assistance, as well as to inform small businesses of their rights to comment to the SBREFA Ombudsman concerning EPA enforcement activities. Be aware that SBREFA does not eliminate your responsibility to respond to a complaint, information request, or other enforcement activity within the allowed time nor does it create any new rights or defenses under the law.

Enclosed for your information are requirements of the Securities and Exchange Commission (SEC) for "registrants" to provide information on environmental legal proceedings to the public. To determine the applicability of these requirements to your company you should seek competent legal counsel as described in the enclosed SEC Notice.

Thank you for your prompt attention to this matter. If you wish to discuss this matter or commence settlement negotiations, please contact Sharon Lin at (415) 972-3446 (for RCRA) or Russ Frazer at (415) 947-4220 (for EPCRA) or have your attorney contact Rebecca Sugerman of the Office of Regional Counsel at (415) 972-3893.

Sincerely,



Joel Jones  
Assistant Director  
Enforcement Division

cc: Donald W. Cuffel, Manager Environmental Engineering, Valero Benicia Refinery  
[Donald.cuffel@valero.com](mailto:Donald.cuffel@valero.com)

Enclosures

SBREFA Information Sheet

Notice of SEC Registrants' Duty to Report

Inspection Report (CD)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D C 20460

**NOTICE OF SECURITIES AND EX CHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE  
ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)): Such proceeding is material to the business or financial condition of the registrant;

A. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

B. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.

## **TITLE 17 - COMMODITY AND SECURITIES EXCHANGES**

Title 17, Volume 2, Parts 200 to 239

(Division: Securities and Exchange Commission)

### **Part 229 - Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975-Regulation S-K**

#### **Subpart 229-100 - Business**

##### **§229.103 (Item 103) Legal proceedings**

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

*Instructions to Item 103:* 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

A. Such proceeding is material to the business or financial condition of the registrant;

B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.





## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrf.org](http://www.nmfrf.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)  
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791



### **Stratospheric Ozone Protection Hotline**

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### **Toxic Substances Control Act (TSCA) Hotline**

[tsca-hotline@epa.gov](mailto:tsca-hotline@epa.gov) or 1-202-554-1404

### **Small Entity Compliance Guides**

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### **Regional Small Business Liaisons**

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### **State Resource Locators**

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### **State Small Business Environmental Assistance Programs (SBEAPs)**

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### **EPA's Tribal Portal**

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### **EPA Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### **EPA's Small Business Compliance Policy**

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### **EPA's Audit Policy**

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### **Your Duty to Comply**

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*